POE ET AL. v. GERSTEIN ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 73-1283. Decided June 3, 1974

A three-judge District Court, which entered a declaratory judgment holding a state abortion statute unconstitutional, properly refused to issue an injunction against enforcement of the statute, where there was no allegation or proof that the State would not acquiesce in the declaratory judgment.

Affirmed.

PER CURIAM.

A three-judge district court entered a declaratory judgment holding unconstitutional a Florida statute, Fla. Stat. Ann. § 458.22 (3) (Supp. 1974–1975), which forbids an abortion without the consent of the husband, if the woman is married, and if unmarried and under the age of 18, without the consent of a parent. Because it was anticipated that the State would respect the declaratory judgment, the court declined to issue an injunction against the enforcement of the statute. The plaintiffs in the District Court are appellants here and challenge the refusal to issue the injunction. The judgment of the District Court is affirmed in this respect. Whether or not the declaratory judgment was itself properly issued, a question on which we intimate no opinion, the District Court properly refused to issue the injunction; for there was "no allegation here and no proof that respondents would not, nor can we assume that they will not, acquiesce in the decision . . . holding the challenged ordinance unconstitutional." *Douglas* v. *City of Jeannette*, 319 U. S. 157, 165 (1943). This aspect of *Douglas* v. *City of Jeannette* has been repeatedly recognized in later cases. *Dombrowski*

v. *Pfister*, 380 U. S. 479, 484–485 (1965); *Zwickler* v. *Koota*, 389 U. S. 241, 253–254 (1967); *Roe* v. *Wade*, 410 U. S. 113, 166–167 (1973). It is unnecessary to deal separately with the question whether the District Court was correct in denying intervention in the District Court to other parties who are appellants here; for assuming they are to be considered proper parties in the District Court and in this Court, we would affirm the denial of the injunction as to them for the same reasons we affirm the denial of such relief to appellants who were plaintiffs below.

So ordered.